

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Appeals for  
the Federal Circuit and the United  
States Court of International Trade

Vol. 18

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April 18, 1984

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No. 16

*This issue contains:*

U.S. Customs Service

T.D. 84-74 through 84-82

Recent Unpublished Customs Service  
Decisions

U.S. Court of Appeal for the Federal Circuit  
Appeal No. 83-1379

THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

## **NOTICE**

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# U.S. Customs Service

## *Treasury Decision*

(T.D. 84-74)

### Bonds

Approval to use authorized facsimile signatures and seals; T.D. 79-241 amended.

The use of facsimile signatures and facsimile seals on Customs bonds by the following corporate surety has been approved effective March 28, 1984.

The corporate surety has provided the Customs Service with a copy of each signature to be used, a copy of the corporate seal, and a certified copy of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

Sentry Insurance A Mutual Company  
Stevens Point, Wisconsin

Authorized facsimile signatures on file for:

L. A. Baker, Attorney-in-fact  
P. A. Boydston, Attorney-in-fact  
Robert A. Dana, Attorney-in-fact  
J. W. Eckstein, Attorney-in-fact  
S. E. Zawacki, Attorney-in-fact

BON-3-01

Dated: March 28, 1984.

EDWARD B. GABLE, Jr.,  
*Director,*  
*Carriers, Drawback and Bonds Division.*

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(T.D. 84-75)

### Bonds

Approval and discontinuance of Carrier's Bonds, Customs Form 3587

Bonds of carriers for the transportation of bonded merchandise have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been dis-

continued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: March 28, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
A.C.B. Trucking, Inc., 2800A Old Jacksonville Hwy., P.O. Box 15596, Little Rock, AR; motor carrier; Transamerica Ins. Co.	Dec. 5, 1983	Jan. 18, 1984	Los Angeles, CA \$50,000
Agate Transport, Inc., P.O. Box 4, Agate, CO; motor carrier; Washington International Ins. Co. (PB 6/26/78) D 1/6/84 <sup>1</sup>	Dec. 8, 1983	Jan. 6, 1984	Great Falls, MT \$25,000
Air Freight Express, 7600 24th Avenue South, Minneapolis, MN; motor and air carrier; The North River Ins. Co.	Dec. 8, 1983	Jan. 16, 1984	Minneapolis, MN \$50,000
All Southern Trucking, Inc., P.O. Box 2698, Tampa, FL; motor carrier; Fidelity & Deposit Co. of MD. (PB 2/1/82) D 11/23/83 <sup>2</sup>	Nov. 17, 1983	Nov. 23, 1983	Tampa, FL \$25,000
American Mail Line Ltd., Seattle, WA; water carrier; Seaboard Surety Co. D 1/26/76	Mar. 18, 1961	Mar. 20, 1961	Seattle, WA \$25,000
Arrow Transfer Co., Ltd., 320 Seymour Blvd., No. Vancouver, B.C., Canada; motor carrier; Continental Ins. Co. D 3/17/80	Apr. 4, 1975	May 27, 1975	Seattle, WA \$25,000
Chuck Barraza, d/b/a/ Barraza Trucking, 10942 Birdwood Circle, Corpus Christi, TX; Western Surety Co.	Nov. 28, 1983	Dec. 22, 1983	Laredo, TX \$25,000
Basse Truck Lines, Inc., 203 Avenue O, Del Rio, TX; motor carrier; National Surety Corp. (PB 8/5/82) D 1/18/84 <sup>3</sup>	Nov. 18, 1983	Jan. 18, 1984	Laredo, TX \$25,000
Bay State Express Co., Inc., 50 Terminal St., Charlestown, MA; motor carrier; Peerless Ins. Co. (PB 10/21/82) D 1/13/84	Oct. 21, 1983	Jan. 13, 1984	Boston, MA \$25,000
Best-Way Transportation, 575 East Wever St., Compton, CA; motor carrier; Sentry Ins. Co.	Nov. 10, 1983	Dec. 29, 1983	Los Angeles, CA \$50,000
A. Betley Cartage, Inc. 8906 S. 83rd Court, Hickory Hills, IL; motor carrier; Great American Ins. Co.	Oct. 25, 1983	Jan. 31, 1984	Chicago, IL \$35,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Blue Line Express, Inc., 260 Daniel Webster Highway, Nashua, NH; motor carrier; The Hanover Ins. Co. (PB 4/20/76) D 1/8/84 <sup>4</sup> .....	Nov. 27, 1983	Dec. 21, 1983	Boston, MA \$50,000
CCX Nationwide, Inc., and its divisions: Coast to Coast Express, Transmark Express, and Gemini Trucking, Inc., P.O. Box 19289, Charlotte, NC; motor carrier; American Casualty Company of Reading, PA. (PB 6/10/83/) D 1/27/84 <sup>5</sup> .....	Nov. 1, 1983	Jan. 27, 1984	Baltimore, MD \$25,000
C.O.D.E. Inc., 4800 Colorado Blvd., Denver, CO; motor carrier; Ins. Co. of North America. D 1/10/84 .....	Nov. 17, 1981	Nov. 17, 1981	El Paso, TX \$25,000
Thomas C. Cala d/b/a T.C. Transportation, Inc., 206 Utah Ave., So. San Francisco, CA; motor carrier; The Ohio Casualty Ins. Co. ....	Jan. 5, 1984	Jan. 23, 1984	San Francisco, CA \$25,000
CAN-AM Marine Transit Limited, P.O. Box 790, Hudson, Quebec, Canada; motor carrier; Old Republic Ins. Co. (PB 2/11/83) D 1/10/84 <sup>6</sup> .....	Jan. 10, 1984	Jan. 24, 1984	Detroit, MI \$50,000
Cargo, Inc., P.O. Box 206, Sioux City, IA; motor carrier; Reliance Ins. Co. D 3/8/84 .....	Dec. 28, 1981	Mar. 18, 1982	Chicago, IL \$25,000
Lowell E. Cawood, d/b/a L.E. Cawood Produce, P.O. Box 83, Springdale, AR; motor carrier; The Aetna Casualty and Surety Co. D 1/24/84 .....	Aug. 16, 1982	Aug. 30, 1982	Laredo, TX \$25,000
Century Lines, Inc., 3725 Lakeside Ave., Cleveland, OH; motor carrier; Washington International Ins. Co. D 1/27/84 .....	May 8, 1981	May 12, 1981	Cleveland, OH \$50,000
Coast to Coast Express—see: CCX Nationwide, Inc.			
Cosmopolitan Express, Inc., 2881 Carl Blvd., Elk Grove Village, IL; motor carrier; Washington International Ins. Co. ....	Aug. 31, 1983	Jan. 20, 1984	Chicago, IL \$25,000
Craven's Trucking Co., P.O. Box 124, Ladson, SC; motor carrier; United States Fire Ins. Co. ....	Jan. 27, 1984	Jan. 27, 1984	Charleston, SC \$25,000
Eagle Express Co., 519 East Second St., South Boston, MA; motor carrier; Aetna Ins. Co. (PB 8/9/79) D 1/26/84 <sup>7</sup> .....	Nov. 1, 1983	Jan. 26, 1984	Boston, MA \$25,000
East Coast Consolidators, Inc., I-295 and Berkley Rd., Paulsboro, NJ; motor carrier; The Aetna Casualty & Surety Co. ....	Apr. 8, 1983	Apr. 19, 1983	Philadelphia, PA \$30,000

## CUSTOMS

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Eazor Special Services, Inc., Eazor Square, Pittsburgh, PA; motor carrier; The American Ins. Co.	Jan. 6, 1984	Jan. 6, 1984	Philadelphia, PA \$25,000
Ed's Seattle Freight Service, Inc. 1200 Occidental Ave., So., Seattle, WA; motor carrier; Safeco Ins. Co. of America.	May 28, 1982	July 2, 1982	Seattle, WA \$25,000
The Fine Arts Express, Inc., 251 Heath St., Boston, MA; motor carrier; Lumbermens Mutual Casualty Co. (PB 11/12/81,) D 12/23/83.....	June 15, 1983	Dec. 23, 1983	Boston, MA \$25,000
Gary's Delivery Service, Ltd., 4756 Trafalgar St., Vancouver, B.C., Canada; motor carrier; Safeco Ins. Co. of America. D 1/23/84.....	July 23, 1982	July 23, 1982	Seattle, WA \$25,000
Gemini Trucking, Inc.—see: CCX Nationwide, Inc.			
Gentrans International Carriers, Inc., 12321 Metropolitan Blvd, East, Montreal, Quebec, Canada; motor carrier; Northwestern National Ins. Co. of Milwaukee, WI.	Dec. 7, 1983	Jan. 10, 1984	Ogdensburg, NY \$100,000
Greyhound Lines of Canada, Ltd., 222-1st Avenue, S.W., Calgary, Alberta, Canada; motor carrier; Royal Ins. Co. of America. (PB 12/11/72) D 1/27/84 *.....	Jan. 30, 1984	Jan. 30, 1984	Seattle, WA \$25,000
Harland Rayvals Transport, Ltd., P.O. Box 592, Prescott, Ontario, Canada; motor carrier; Washington International Ins. Co.	Dec. 19, 1983	Jan. 11, 1984	Ogdensburg, NY \$25,000
The Hawaii Express, Inc., 10960 Wilshire Blvd., Los Angeles, CA; air carrier; Commercial Union Ins. Co. D 1/13/84.....	Aug. 24, 1982	Sept. 27, 1982	Honolulu, HI \$25,000
Hemingway Transport, Inc., 438 Dartmouth St., New Bedford, MA; motor carrier; National Union Fire Ins. Co.	Jan. 19, 1983	Dec. 28, 1983	Boston, MA \$50,000
International Freight Carriers Ltd., 29285 Airport Drive, Romulus, MI; motor carrier; Sentry Insurance, a Mutual Co.	Jan. 6, 1984	Jan. 22, 1984	Detroit, MI \$50,000
Interstate Rental, Inc.—see: Western Express			
Dick Irvin Inc., Box F, Shelby, MT; motor carrier; The Travelers Indemnity Co.	Jan. 23, 1984	Jan. 24, 1984	Great Falls, MT \$25,000
J-LOR Trucking, Inc., 819 So. Director, Seattle, WA; motor carrier; Old Republic Ins. Co.	Jan. 12, 1984	Jan. 13, 1984	Seattle, WA \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
J.R. Express, Inc., P.O. Box 840, Anderson, SC; motor carrier; Old Republic Ins. Co.	Jan. 4, 1984	Jan. 12, 1984	Charleston, SC \$25,000
Jet-Pac, Inc., 4475 So. 134th Place, Seattle, WA; motor carrier; Safeco Ins. Co. of America.	Aug. 24, 1981	Jan. 29, 1982	Seattle, WA \$25,000
Ken-Dale Express, Inc., 2050 West Third St., Cleveland, OH; motor carrier; Protective Ins. Co.	Dec. 20, 1983	Jan. 10, 1984	Cleveland, OH \$50,000
Kenbrent Holdings Ltd. and wholly owned subsidiary: Kenbrent Refrigerated Express B.C. Ltd., 2615 26th St. N.E., Calgary, Alberta, Canada; motor carrier; Ins. Co. of North America.	Jan. 11, 1984	Jan. 31, 1984	Great Falls, MT \$25,000
Kenbrent Refrigerated Express B.C. Ltd.—see: Kenbrent Holdings Ltd.			
Land Span, Inc., 6270 McDonough Dr., Suite G, Norcross, GA; motor carrier; St. Paul Fire & Marine Ins. Co.	Nov. 11, 1983	Jan. 20, 1984	Savannah, GA \$25,000
Leicht Industries, Inc., d/b/a Leicht Transfer & Storage Co. and TRI-L Transport, Inc., 1401-55 State St., Green Bay, WI; motor carrier; United States Fidelity and Guaranty Co.	Jan. 6, 1984	Jan. 9, 1984	Seattle, WA \$25,000
Leicht Transfer & Storage Co.—see: Leicht Industries, Inc.			
Magann Equipment, Inc., P.O. Box 1242, Georgetown, SC; motor carrier; Peerless Ins. Co.	Dec. 15, 1983	Jan. 11, 1984	Charleston, SC \$50,000
Marlor Enterprises, Ltd., 5051 Still Creek Rd., Burnaby, B.C., Canada; motor carrier; Fireman's Fund Ins. Co.	Dec. 15, 1983	Jan. 19, 1984	Seattle, WA \$25,000
Mercer Brothers Trucking Co., P.O. Box 952, Wilson, NC; motor carrier; Allied Fidelity Ins. Co. (PB 9/12/80) D 1/5/84 <sup>9</sup> .....	Oct. 17, 1983	Jan. 6, 1984	Wilmington, NC \$25,000
Millers Bend Carriers, Inc., Hwy 43, North, Thomasville, AL; motor carrier; Ins. Co. of North America. D 1/13/84.....	May 19, 1982	June 22, 1982	Mobile, AL \$25,000
Momsen Trucking Co., 13811 "L" St., Omaha, NB; motor carrier; St. Paul Fire & Marine Ins. Co. D 1/26/84.....	July 16, 1980	July 24, 1980	Chicago, IL \$25,000
Nebraska Bulk Transports, Inc., P.O. Box 215, Bennet, NB; motor carrier; The American Ins. Co. (PB 5/1/81) D 1/26/84 <sup>10</sup> .....	Dec. 1, 1983	Jan. 26, 1984	Chicago, IL \$25,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Northwestern Trucking, Inc., 123 South Kenyon St., Seattle, WA; motor carrier; Washington International Ins. Co. (PB 5/28/81) D 1/17/84.....	May 28, 1983	Jan. 17, 1984	Seattle, WA \$25,000
The O. K. Trucking Co., 3000 East Crescentville Rd., Cincinnati, OH; motor carrier; The Travelers Indemnity Co.	Jan. 10, 1984	Jan. 27, 1984	Cleveland, OH \$50,000
Oceanic Shipping Co., Inc., P.O. Box 2252999, Houston, TX; motor carrier; Trinity Universal Ins. Co.	July 23, 1983	Jan. 13, 1984	Houston, TX \$50,000
Osborn Transportation, Inc., P.O. Box 1830, Highway 77, Gadsden, AL; motor carrier; Ins. Co. of North America.	Dec. 30, 1980	Feb. 2, 1981	Seattle, WA \$25,000
Pacific Air Courier, Inc., 1122 Fir St., Bldg. B-3, Blaine, WA; air carrier; Safeco Ins. Co. of America. D 1/23/84.....	May 20, 1982	June 11, 1982	Seattle, WA \$25,000
R F Trucking, Inc., 514 East Lake Ave., Blackwood, NJ; motor carrier; Ins. Co. of North America.	Dec. 14, 1983	Dec. 29, 1983	Philadelphia, PA \$25,000
Reliance Express, Inc., P.O. Box 70984, Charleston, SC; motor carrier; Reliance Ins. Co. D 1/9/84.....	Jan. 3, 1983	May 2, 1983	Charleston, SC \$25,000
Remington Freight Lines, Inc., Box 315—U.S. 24 West, Remington, IN; motor carrier; The Aetna Casualty & Surety Co. D 1/12/84.....	Feb. 4, 1981	Feb. 13, 1981	Cleveland, OH \$50,000
River Road Transportations Services, Inc., 329 Heritage Ave., Gretna, LA; motor carrier; The Travelers Indemnity Co.	Dec. 22, 1983	Jan. 10, 1984	New Orleans, LA \$25,000
Roadrunner Trucking, Inc., 4100 Edith Blvd., N.E., Albuquerque, NM; motor carrier; Ins. Co. of North America.	Dec. 15, 1983	Jan. 18, 1984	El Paso, TX \$100,000
S & N Freight Line, Inc., P.O. Box 12147, Norfolk, VA; motor carrier; Great American Ins. Co. D 5/15/83.....	May 15, 1968	July 24, 1968	Norfolk, VA \$25,000
Sav-Mor Transportation, Inc., 37 Mystic St., Everett, MA; motor carrier; Peerless Ins. Co.	Dec. 5, 1983	Jan. 3, 1984	Boston, MA \$25,000
SEA-MAR Services, Inc., 2111 N. Pace Blvd., Pensacola, FL; motor carrier; Fidelity & Deposit Co. of MD. D 10/29/83.....	Apr. 21, 1983	May 20, 1983	Mobil, AL \$25,000



Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Smyth Van Line, Inc., P.O. Box 3020, Bellevue, WA; motor carrier; The Travelers Indemnity Co. D 11/8/79.....	Apr. 14, 1976	Apr. 28, 1976	Seattle, WA \$35,000
Spear Enterprises, Inc. d/b/a United Truck Lines, 675 Arthur Ave., San Francisco, CA; motor carrier; South Carolina Ins. Co. D 12/7/83.....	May 5, 1982	May 5, 1982	San Francisco, CA \$25,000
Stanch Freight Service, Inc., 774 Bedford Ave., Brooklyn, NY; motor carrier; American Motorists Ins. Co.	May 19, 1983	Jan. 12, 1984	New York Seaport \$200,000
T.C. Transportation, Inc.—see: Thomas C. Cala			
TRI-L Transport, Inc.—see: Leicht Industries, Inc.			
Transmark Express—see: CCX Nationwide, Inc.			
United States Lines (S.A.) Inc., Two Broadway, New York, NY; water carrier; American Motorists Ins. Co. (PB 5/16/83) D 11/4/83 <sup>11</sup> .....	Nov. 4, 1983	Nov. 14, 1983	New York Seaport \$100,000
United Truck Lines—see: Spear Enterprises, Inc.			
Universal AM-CAN, Ltd., 4100 W. Kennedy Blvd., Tampa, FL; motor carrier; Ins. Co. of North America.	Jan. 13, 1984	Jan. 30, 1984	Tampa, FL \$25,000
Western Express, Div. of Interstate Rental, Inc., P.O. Box 10, Austell, GA; motor carrier; The Aetna Casualty & Surety Co. (PB 11/1/82) D 1/22/84 <sup>12</sup> .....	Sept. 1, 1983	Jan. 23, 1984	Los Angeles, CA \$60,000
Wood Bros. Transfer, Inc., 2410 Commerce St., Houston, TX; motor carrier; St. Paul Fire & Marine Ins. Co. D 1/24/84.....	Aug. 20, 1976	Aug. 27, 1976	Houston, TX \$25,000

<sup>1</sup> Principal is Agate Elevator Agricultural & Livestock Co-op Corp. Surety is St. Paul Fire & Marine Ins. Co.

<sup>2</sup> Surety is Northwestern National Ins. Co. of Milwaukee, WI.

<sup>3</sup> Surety is Aetna Casualty & Surety Co.

<sup>4</sup> Surety is Lawyers Surety Corp.

<sup>5</sup> Principal is CCX Nationwide, Inc.

<sup>6</sup> Surety is Peerless Ins. Co.

<sup>7</sup> Surety is Peerless Ins. Co.

<sup>8</sup> Surety is Commercial Union Ins. Co.

<sup>9</sup> Surety is United States Fire Ins. Co.

<sup>10</sup> Surety is Aetna Casualty & Surety Co.

<sup>11</sup> Principal is Moore-McCormack Lines, Inc.

<sup>12</sup> Surety is Travelers Indemnity Co.

BON-3-03

216795

EDWARD B. GABLE, Jr.,  
*Director,*  
*Carriers, Drawback and Bonds Division.*

(T.D. 84-76)

**Bonds**

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: March 28, 1984.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
<p>Emerald Airlines, 1106 Clayton Lane, Austin, TX; Fidelity &amp; Deposit Company.</p> <p>The foregoing principal has been designated a carrier of bonded merchandise.</p>	Jan. 30, 1984	Mar. 16, 1984	Dallas/Ft. Worth, TX \$100,000

BON-3-01  
216747

EDWARD B. GABLE, Jr.,  
*Director, Carriers, Drawback and Bonds Division.*

19 CFR Part 18

(T.D. 84-77)

Customs Regulations Amendments Relating to the Entry of  
Explosives for Transportation and Exportation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

**SUMMARY:** This document amends the Customs Regulations to permit explosives, for which an intransit license or permit has been issued by the Department of State or the Bureau of Alcohol, Tobacco, and Firearms, to be shipped through the United States under a Transportation and Exportation entry. This action is being taken to allow importers of explosives and other prohibited merchandise that have obtained written authority to do so, to transport the articles through the United States and export them.

**EFFECTIVE DATE:** May 7, 1984.  
ter).

**FOR FURTHER INFORMATION CONTACT:** Jerry Laderberg, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

Section 18.21(b), Customs Regulations (19 CFR 18.21(b)), provides that narcotics and other prohibited articles may be entered into the commerce of the United States for transportation and exportation only upon written authority from the proper governmental agency and/or compliance with the regulations of such agency. However, section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553), provides, in part, that "*Any merchandise, other than explosives and merchandise the importation of which is prohibited, shown by the manifest, bill of lading, shipping receipt, or other document to be destined to a foreign country, may be entered for transportation in bond through the United States by a bonded carrier without appraisement or the payment of duties and exported under such regulations as the Secretary of the Treasury shall prescribe \* \* \**" (Emphasis supplied.). Thus, it would appear that 19 U.S.C. 1553 prohibits the in-bond transportation of explosives, even though a license or permit is issued by the proper governmental agency authorizing the movement.

Further, 22 U.S.C. 2778, relating to the control of exports and imports of defense articles and services, provides in paragraph (a) that the President is authorized to designate those items which shall be considered as defense articles and services. The items so designated constitute the U.S. Munitions List. Paragraph (b) of 22 U.S.C. 2778 provides that with certain specified exemptions, no defense articles or services on the U.S. Munitions List may be exported or imported without a license issued in accordance with the statute or regulations issued under the statute.

The Department of State regulations set forth in 22 CFR 121.20, 123.02, and 123.03, provide that items on the U.S. Munitions List temporarily entering the United States in transit to another coun-

try, shall constitute a temporary import for which a Department of State Intransit License shall be required.

Under a well-recognized principle of legislative construction, when two provisions of statutory law appear to be in conflict, but can be interpreted to be in conformity, they should be so interpreted. Section 553, Tariff Act of 1930, predates 22 U.S.C. 2778 and its predecessor statute, 22 U.S.C. 1934, and when enacted, Congress did not contemplate the licensing procedures implemented by the State Department with regard to the transportation and exportation of defense articles such as explosives.

While 19 U.S.C. 1553 clearly prohibits the shipment of explosives under a Transportation and Exportation (T&E) entry, section 18.21(b), Customs Regulations, allows the transportation and exportation of prohibited merchandise upon written authority from the proper governmental agency and/or compliance with the regulations of such agency.

Accordingly, by ruling #715801 M, dated October 28, 1981, Customs ruled that explosives, for which an intransit license has been issued by the Department of State, Office of Munitions Control, may be transported under a T&E entry (Customs Form 7512). The ruling involved a request by a Canadian manufacturer for permission to transport through the United States explosives manufactured in his plant in Canada and destined for exportation outside the United States. Most of the shipments were for North American Treaty Organization purposes. In effect, such transportation and exportation movement is made under the authority of the laws and regulations governing the agency which, in these circumstances, Customs believes overrides the prohibition set forth in 19 U.S.C. 1553. In the absence of such authorization from the governmental agency, the transportation and exportation movement would, of course, be denied.

Customs believes that the principles enunciated in that ruling should apply also to shipments of explosives authorized by the Bureau of Alcohol, Tobacco and Firearms (BATF) [see 27 CFR Part 47.]. Thus, the issuance of the appropriate license by the Department of State or BATF would be their authorization of the requested movement of explosives under a T&E entry. Without the change to section 18.21, Customs Regulations, the public would be precluded from using the T&E procedures to ship explosives through the United States, and thus the license or permit issued by these agencies would be meaningless.

Therefore, to clarify the apparent statutory conflict, by notice published in the Federal Register on January 18, 1983 (48 FR 2134), Customs proposed to amend section 18.21 by adding a new paragraph (d) to permit explosives to be entered under a T&E entry.

Also, it was proposed to amend section 18.25, Customs Regulations (19 CFR 18.25), by removing paragraph (e) which relates only to the limited situation whereby explosives are entered on arrival

from a foreign port for immediate exportation under bond by sea and are transferred directly from the importing to the exporting vessel for exportation.

Two comments were received in response to the notice. One suggested that the regulations be amended to define "explosives" because the information available is either vague or non-existent.

The issue before Customs is whether the merchandise is prohibited from entry and/or transportation in the United States. As was pointed out in ruling #715801, explosives are not *per se* prohibited from entry and/or transportation in the United States by 19 U.S.C. 1553. Customs does not believe it is necessary to define explosives in its regulations; and to do so could conflict with definitions of the term used by other agencies.

The other commenter requested that the proposal be clarified to ensure that all explosives appearing on the BATF list of explosive materials contained in 27 CFR 47.21, and other explosive materials meeting the definitions in sections 841 (C), (D), (E), and (F), title 18, U.S.C., be allowed T&E entry privileges. The same commenter also requested that the regulation provide a Department of Transportation waiver to allow T&E entries for all truck and rail shipments of explosives from Canada.

Customs believes that both of these requests are more properly addressed to the agencies having jurisdiction over explosives. For this reason, section 18.21 is revised so that the importer is directed to obtain a license or permit from the proper governmental agency. This will obviate the necessity of amending the regulations in the future if statutory or regulatory schemes are changed, or if additional agencies acquire jurisdiction over the articles.

After consideration of the comments and further review of the matter, it has been determined to adopt the proposal with the change noted above. In addition, because situations may arise in which the procedure set forth in paragraph (e) to section 18.25 may be used, it has been determined not to delete the paragraph.

#### EXECUTIVE ORDER 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

#### REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this rule because the amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or impose or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendment will not have a significant economic impact on a substantial number of small entities.

#### DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### LIST OF SUBJECTS IN 19 CFR PART 18

Customs duties and inspection, Explosives, Imports, Importers.

#### AMENDMENTS TO THE REGULATIONS

Part 18, Customs Regulations (19 CFR Part 18), is amended as set forth below.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: March 16, 1984.

JOHN M. WALKER, JR.,  
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, April 5, 1984 (49 FR 13490)]

#### PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

Section 18.21 is amended by adding a new paragraph (d) to read as follows:

##### § 18.21 Restricted and prohibited merchandise.

\* \* \* \* \*

(d) Explosives shall not be entered for transportation and/or exportation under a transportation and exportation entry, or an immediate transportation entry unless the importer has first obtained a license or permit from the proper governmental agency.

(R.S. 251, as amended (19 U.S.C. 66), sections 502, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1502, 1624), 77A Stat. 14 (19 U.S.C. 1202))

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## 19 CFR Part 162

(T.D. 84-78)

Customs Regulations Amendment Concerning Disposition of Proceeds of Sale of Property Seized and Forfeited Other Than Under 19 U.S.C. 1592

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations concerning the disposition of the proceeds of the sale of property seized and forfeited under laws other than 19 U.S.C. 1592, when no application for remission and restoration is filed, or the application is denied. The amendment eliminates language which precludes the recovery of expenses incurred for Government labor and storage on Government-owned or Government-leased property. This change is necessary inasmuch as the prohibition of the current regulation has hindered Government enforcement efforts.

EFFECTIVE DATE: May 7, 1984.

FOR FURTHER INFORMATION CONTACT: Robert J. Pisani, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8317).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 162.51(a)(2)(iv), Customs Regulations (19 CFR 162.51(a)(2)(iv)), which was amended by T.D. 79-160, published in the Federal Register on June 4, 1979 (44 FR 31950), provides that the Government may not recover expenses incurred for Government labor and storage on Government-owned or Government-leased property from the proceeds of the sale of property seized and forfeited under laws enforced or administered by Customs other than under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), when no application for remission and restoration is filed or the application is denied. Prior to T.D. 79-160, section 162.51 had stated that if the forfeited property is cleared for sale, the Customs appropriation shall be reimbursed from the proceeds of the sale for *all* expenses paid from such appropriation in connection with the seizure and forfeiture of such property.

The restriction of present section 162.51(a)(2)(iv) is not contained in section 613, Tariff Act of 1930, as amended (19 U.S.C. 1613), which provides for the payment of all proper expenses of the proceedings and sale, including expenses of maintaining custody of the property.



The inability to recover expenses incurred for Government labor and storage on Government-owned or Government-leased property has hindered Government enforcement efforts, inasmuch as those expenses must be paid with funds appropriated for other purposes such as enforcement efforts. The total cost of storing and maintaining conveyances in the Southeast Customs Region (Miami) alone has exceeded \$2,000,000 per year.

Accordingly, by notice published in the Federal Register on September 9, 1983 (48 FR 40740), it was proposed to amend section 162.51(a)(2)(iv) to eliminate the language which precludes the recovery of such expenses. Interested parties were given until November 8, 1983, to submit comments with respect to the proposed change. No comments were received in response to the notice. The amendment, therefore, is adopted as proposed.

#### EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

#### REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to initial and final regulatory flexibility analyses (5 U.S.C. 603, 604) are not applicable to this change because the rule will not have a significant economic impact on a substantial number of small entities. The amendment is not expected to have significant secondary or incidental effects on a substantial number of small entities or to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the rule will not have a significant economic impact on a substantial number of small entities.

#### DRAFTING INFORMATION

The principal author of this document was Susan S. Terranova, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

#### LIST OF SUBJECTS IN 19 CFR PART 162

Customs duties and inspection, Imports, Seizures and forfeitures.



## AMENDMENT TO THE REGULATIONS

Part 162, Customs Regulations (19 CFR Part 162), is amended as set forth below.

WILLIAM VON RAAB,  
*Commissioner of Customs.*

Approved: March 16, 1984.

JOHN M. WALKER, JR.,  
*Assistant Secretary of the Treasury.*

[Published in the Federal Register, April 5, 1984 (49 FR 13492)]

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PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND  
SEIZURE

Section 162.51(a)(2)(iv) is revised to read as follows:

**§ 162.51 Disposition of proceeds of sale of property seized and  
forfeited other than under 19 U.S.C. 1592.**

(a) \* \* \*

(2) \* \* \*

(iv) Expenses of cartage, storage, and labor. When the proceeds are insufficient to pay these expenses fully, they shall be paid pro rata.

\* \* \* \* \*

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

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(T.D. 84-79)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued December 15, 1983, to January 23, 1984, inclusive, pursuant to Subpart C of Part 191, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

Dated: March 28, 1984.

File: 216796

EDWARD B. GABLE, JR.,  
*Director,*  
*Carriers, Drawback and Bonds Division.*

(A) Company: Amax, Inc., Amax Tungsten Division  
Articles: Ammonium Paratungstate, Tungstic Oxide, and Ammonium Metatungstate  
Merchandise: Tungsten concentrates and Ammonium Paratungstate  
Factory: Ft. Madison, IA  
Statement signed: August 12, 1983  
Basis of claim: Appearing in  
Rate forwarded to Regional Commissioner of Customs: New York, December 29, 1983  
Revokes: T.D. 81-281-B

(B) Company: Barouh Eaton Allen Corp. (Ko-Rec-Type Division)  
Articles: Black cartridges or cassettes with ink ribbons for use in typewriters, adding machines, computers and mini-computers  
Merchandise: Nylon fabric (word processing material)  
Factory: Brooklyn, NY  
Statement signed: August 19, 1983  
Basis of claim: Appearing in  
Rate forwarded to Regional Commissioner of Customs: New York, December 20, 1983

(C) Company: Chevron Chemical Company  
Articles: Difolatan Technical, various forms (This is a fungicidal chemical)  
Merchandise: Methanol  
Factory: Richmond, CA  
Statement signed: October 18, 1983  
Basis of claim: Used in  
Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), December 19, 1983

(D) Company: Chevron Chemical Company  
Articles: Lubricating oil additives  
Merchandise: Tetraethylenepentamine and Triethylenetetramine  
Factory: Belle Chasse, LA  
Statement signed: September 6, 1983  
Basis of claim: Used in  
Rate forwarded to Regional Commissioners of Customs: New Orleans and Los Angeles (San Francisco Liquidation), December 27, 1983

(E) Company: Cyclops Corporation, Universal-Cyclops Specialty Steel Division

Articles: Specialty steel products including, but not limited to, billets, bars, sheets, and plates

Merchandise: High purity alloy ferro columbium, vacuum grade; Aluminathermic chromium metal alloy; Low nitrogen ferrochrome alloy

Factories: Bridgeville, Titusville, and Pittsburgh, PA; Coshocton, OH

Statement signed: December 8, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), January 18, 1984

(F) Company: Eli Lilly and Company

Articles: Zinc insulin crystals human (r dna origin), "A"-chain and "B"-chain products as described in statement, and chemical insulin formulations

Merchandise: L-Tryptophan, zinc-insulin crystals human dista (r dna origin), sephadex (various types), protomine sulfate, and calcium chloride

Factory: Indianapolis, IN

Statement signed: August 9, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 15, 1983

(G) Company: Eli Lilly and Company

Articles: Zinc insulin crystals (beef, pork, or mixed regular) in intermediate, bulk, and finished formulations of insulin-crystals (iletin)

Merchandise: Insulin salt cake; Zinc insulin crystals (beef, pork, and other), DEAE Sephadex A-25; Sephadex G-50, Superfine and Superfine S.G.; SP Sephadex C-25; Protamine Sulfate

Factories: Indianapolis, IN (2 locations)

Statement signed: August 24, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 19, 1983

Revokes: T.D. 55492-J (an amendment to T.D. 52031-B) and T.D. 81-180-N

(H) Company: Ericsson, Inc., Anaconda Wire & Cable Company Division

Articles: Wire and cable products

Merchandise: Copper rod

Factories: As listed in statement

Statement signed: October 31, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York,  
December 22, 1983

(I) Company: Hollytex Carpet Mills, Inc.

Articles: Nylon yarn and nylon carpet

Merchandise: Nylon staple and filament fiber

Factories: Watonga, and Anadarko, OK; Milledgeville, GA; City of  
Industry, CA

Statement signed: August 8, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Los Angeles,  
December 28, 1983

(J) Company: Hunt-Wesson Foods, Inc.

Articles: Consumer products containing tomato paste; Industrial  
bulk tomato paste

Merchandise: Tomato paste

Factories: Fullerton, Oakdale, and Davis, CA; Perrysburg, OH

Statement signed: November 29, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Los Angeles  
(San Francisco Liquidation), January 5, 1984

Revokes: T.D. 67-130-R and T.D. 76-319-W (Amendments to T.D.  
53749-B)

(K) Company: International Minerals and Chemical Corporation,  
Industrial Chemicals Division

Articles: Pentaerythritol; trimethylolethane; calcium formate;  
sodium formate; dimethylolpropionic acid

Merchandise: Methanol

Factory: Allentown, PA

Statement signed: December 20, 1982

Basis of claim: Used in, for dimethylolpropionic acid; for other  
products, used in, with distribution to the products obtained in  
accordance with their relative values at the time of separation

Rate forwarded to Regional Commissioner of Customs: Chicago,  
January 5, 1984

(L) Company: KMC Foods, Inc.

Articles: Tomato catsup, tomato juice, vegetable juice cocktail, and  
barbeque sauce

Merchandise: Tomato paste

Factories: Queen Anne, MD; Cheriton, VA

Statement signed: September 15, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Boston (Bal-  
timore Liquidation), January 12, 1984

(M) Company: Lockwood Corporation

Articles: Irrigation Systems

Merchandise: Unwrought zinc ingots

Factory: Gering, NE

Statement signed: November 7, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 19, 1983

(N) Company: Merck & Co., Inc.

Articles: Dimethyl diallyl ammonium chloride, monomer and bulk; bulk conductive power 26ILV; CAT-FLOC T; CAT-FLOC C; MERQUAT 100

Merchandise: Allyl chloride

Factory: Hawthorne, NJ

Statement signed: September 21, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, January 17, 1984

(O) Company: Merck & Co., Inc.

Articles: Sodium alginates; sodium alginate with diammonium phosphate; sodium-calcium alginate; sodium alginate/sodium sulfates; ammonium alginates; ammonium/calcium alginates; blend of sodium alginate (cocoloid) (all of the foregoing are finished product formulations)

Merchandise: Ammonium alginate; calcium alginate; sodium alginate

Factory: San Diego, CA

Statement signed: November 15, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, December 23, 1983

(P) Company: Merck & Co., Inc.

Articles: Chlorothiazide, Hydrochlorothiazide, and DSA-Disulfonamide wet cake

Merchandise: Formamide technical, and Meta Chloroaniline Technical

Factory: Albany, GA

Statement signed: October 15, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, January 23, 1984

(Q) Company: National Distillers and Chemical Corporation, Emery Industries Division

Articles: m-Chloro Phenyl Diethanolamine in press cake and chunk form

Merchandise: m-Chloroaniline

Factory: Lock Haven, PA

Statement signed: August 16, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 27, 1983

(R) Company: Parman Kendall Corporation

Articles: Preserved concentrated lime juice

Merchandise: Concentrated lime juice

Factory: Goulds, FL

Statement signed: December 7, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Miami, December 23, 1983

(S) Company: Parman Kendall Corporation

Articles: Reconstituted lime juice

Merchandise: Concentrated lime juice

Factory: Goulds, FL

Statement signed: December 7, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Miami, December 27, 1983

(T) Company: Pfizer Inc.

Articles: Vansil capsules

Merchandise: Oxaminiquine

Factory: Brooklyn, NY

Statement signed: July 21, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, January 12, 1984

(U) Company: RCA Corporation

Articles: Television picture tubes (kinescopes)

Merchandise: Support frames

Factories: Marion, IN; Scranton and Lancaster, PA

Statement signed: November 16, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), January 23, 1984

(V) Company: Rockwell International Corp., Wheel and Ornamentation Business Div.

Articles: Aluminum Wheels

Merchandise: Alloy Aluminum Sows and Ingots

Factory: La Mirada, CA

Statement signed: September 10, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,  
January 20, 1984

(W) Company: Sterling Drug, Inc.

Articles: Hypaque meglumine; hypaque sodium

Merchandise: Hypaque acid; methyl glucamine

Factory: Rensselaer, NY

Statement signed: May 5, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,  
January 20, 1984

(X) Company: Struthers Thermo-Flood Corporation

Articles: Steam generators, complete or modular sections

Merchandise: Steel pipe, valves, and steel plate

Factory: Winfield, KS

Statement signed: September 23, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Los Angeles  
(San Francisco Liquidation), December 29, 1983

Revokes: T.D. 82-86-V

(Y) Company: Union Carbide Corporation

Articles: Ethylidenenorbornene

Merchandise: Dicyclopentadiene

Factory: Charleston, WV

Statement signed: September 6, 1983

Basis of claim: Used in, with distribution to the products obtained  
in accordance with their relative values at the time of separation

Rate forwarded to Regional Commissioner of Customs: New York,  
January 18, 1984

(Z) Company: Vacumet Corporation

Articles: Vacuum Metallized Polyester Film

Merchandise: Polyester Film

Factory: Wayne, NJ

Statement signed: January 10, 1984

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,  
January 23, 1984

(T.D. 84-80)

### Synopses of Drawback Decisions

The following are synopses of drawback rates issued October 24, 1983, to December 13, 1983, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations, or pursuant to Sub-

part C of Part 191, Customs Regulations (the revised drawback regulations, T.D. 83-212).

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

(DRA-1-09)

Dated: March 29, 1984.

File: 216819

EDWARD B. GABLE, JR.,

*Director,*

*Carriers, Drawback and Bonds Division.*

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(A) Company: Armstrong World Industries, Inc.

Articles: Resilient vinyl sheet flooring

Merchandise: Polyvinyl chloride resins

Factory: Lancaster, PA

Statement signed: August 11, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), October 24, 1983

(B) Company: Beecham Inc.

Articles: NAPOH powders, Amoxicillin Trihydrate and Sodium Amoxicillin in various forms

Merchandise: d-Hydroxyphenyl Glycine

Factories: Piscataway, NJ; and Bristol, TN

Statement signed: July 25, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, December 2, 1983

Revokes: T.D. 74-221-W and T.D. 74-253-S

(C) Company: Chevron Chemical Company

Articles: Monitor 600

Merchandise: Chevron Monitor 60 percent Concentrate (aka Methamidophos Concentrate, O,S-Dimethyl Phosphoramidothioate, and CAS 10265-92-6)

Factory: Richmond, CA

Statement signed: July 29, 1983

Basis of claim: Used in



Rate forwarded to Regional Commissioner of Customs: Los Angeles (San Francisco Liquidation), November 29, 1983

(D) Company: Citrus Central Inc.

Articles: Frozen concentrated orange juice; orange juice from concentrate; bulk concentrated orange juice; other orange juice products that meet customer specifications

Merchandise: Concentrated orange juice for manufacturing

Factories: Winter Haven, Umatilla and Winter Garden, FL

Statement signed: August 12, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Miami, December 1, 1983

Revokes: T.D. 82-39-C

(E) Company: Cutler Egg Products, Inc.

Articles: Frozen and dried egg products

Merchandise: Eggs in the shell (chicken); liquid egg whites; liquid egg yolks; liquid whole eggs

Factory: Abbeville, AL

Statement signed: November 15, 1983

Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), December 13, 1983

(F) Company: Diamond Shamrock Agricultural Chemicals, Inc.

Articles: Technical MCPA

Merchandise: 2-Methyl-4-chlorophenol a.k.a. PCOC and BH-Parachloro, ortho-cresol

Factory: Holt, AL

Statement signed: June 22, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, October 24, 1983

(G) Company: Duracell, Inc.

Articles: Dry cell (alkaline manganese) batteries, various sizes

Merchandise: Battery grade manganese dioxide; virgin mercury; graphite powder; polyvinyl chloride (PVC) tubing

Factory: Lexington and Valdese, NC; Cleveland, TN; La Grange, GA; Lancaster, SC; Waterbury, CT

Statement signed: June 22, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, November 1, 1983

(H) Company: Eli Lilly and Co.

Articles: Moxalactam acid; moxalactam disodium; Moxalactam diammonium salt and Hydroxydiester (Moxam®), in bulk and finished product formulations

Merchandise: Various merchandise

Factories: Lafayette, Clinton, Indianapolis (2) and Greenfield, IN

Statement signed: June 27, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 5, 1983

(I) Company: Eli Lilly Industries, Inc.

Articles: Acetohexamide in various forms

Merchandise: p-Acetylbenzenesulfonamide and Sodium p-Acetylbenzenesulfonate

Factories: Carolina, and Mayaguez, PR

Statement signed: October 11, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Miami, December 13, 1983

(J) Company: Eli Lilly Industries, Inc.

Articles: Dextro Carbinol Base (Darvon)

Merchandise: Camphor Sulfonic Acid

Factories: Carolina, and Mayaguez, PR

Statement signed: October 10, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Miami, December 13, 1983

(K) Company: International Multifoods Corporation

Articles: Wheat germ product; regular toasted wheat germ; wheat germ with sugar and honey

Merchandise: Pure wheat germ, 28-32 percent protein

Factories: Carrollton, MI; Manhattan, KS

Statement signed: August 5, 1983

Basis of claim: Used in, less valuable waste

Rate forwarded to Regional Commissioner of Customs: Chicago, November 10, 1983

(L) Company: Lindsay Manufacturing Company

Articles: Irrigation Systems

Merchandise: Unwrought zinc ingots

Factory: Lindsay, NE

Statement signed: November 23, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Chicago, December 7, 1983

(M) Company: Monsanto Company

Articles: Acetic acid (glacial acetic acid); NTA (trisodium nitrilotriacetate monohydrate)

Merchandise: Methanol (Methyl alcohol)

Factories: Alvin and Texas City, TX; Eugene, OR

Statement signed: August 30, 1983

Basis of claim: Used in, as to acetic acid; as to NTA, used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Rate forwarded to Regional Commissioners of Customs: Chicago and New York, November 17, 1983

(N) Company: Monsanto Company

Articles: Saflex SR Film

Merchandise: Butvar Resin SR (a terpolymer resin)

Factories: Trenton, MI; Indian Orchard, MA

Statement signed: November 14, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioners of Customs: Chicago and New York, December 13, 1983

(O) Company: Nashua Corporation

Articles: Photoreceptor copier drums

Merchandise: Aluminum alloy tubing

Factories: Nashua, NH; and factories of agents operating under T.D. 81-181

Statement signed: July 21, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: Boston, November 2, 1983

(P) Company: Rhone-Poulenc Inc.

Articles: Unexposed microfilm

Merchandise: Triacetate film base

Factory: Rochester, NY

Statement signed: June 30, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, November 29, 1983

(Q) Company: Rohm and Haas Tennessee Inc.

Articles: Stam series

Merchandise: Propionic acid

Factory: Knoxville, TN

Statement signed: October 3, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: Boston (Baltimore Liquidation), December 13, 1983

(R) Company: Seven-Up Company

Articles: Processed lemon oil #3280  
Merchandise: Lemon oil  
Factory: St. Louis, MO  
Statement signed: November 11, 1983  
Basis of claim: Used in  
Rate issued by Regional Commissioner of Customs in accordance  
with section 22.4(O)(2): Chicago, November 25, 1983  
Revokes: T.D. 84-2-S

(S) Company: Sheffield Plastics, Inc.  
Articles: Precision plastic extrusions; Extruded plastic sheets  
Merchandise: Acrylic resins; Polycarbonate resin  
Factories: Sheffield, MA (2 locations)  
Statement signed: September 6, 1983  
Basis of claim: Appearing in  
Rate forwarded to Regional Commissioner of Customs: Boston, December 6, 1983

(T) Company: Smart-Pak Industries, Inc.  
Articles: Printed laminations, printed films, and polypropylene bags, pouches and sheets  
Merchandise: Coated oriented polypropylene film  
Factory: Miami, FL  
Statement signed: June 10, 1983  
Basis of claim: Used in  
Rate forwarded to Regional Commissioner of Customs: Miami, December 13, 1983

(U) Company: Tropicana Products, Inc.  
Articles: Pasteurized orange juice  
Merchandise: Orange juice  
Factories: Bradenton and Fort Pierce, FL  
Statement signed: September 26, 1983  
Basis of claim: Used in  
Rate forwarded to Regional Commissioner of Customs: Miami, November 15, 1983

(V) Company: Union Carbide Corporation  
Articles: Phase I and phase II products as listed; Manufactured articles as listed (see pp. 3-4, contract)  
Merchandise: Phase I petroleum derivatives (refinery gas, naphtha, and gas oil); Phase II petrochemicals (ethylene, propylene, acetylene, benzene, and naphthalene)  
Factories: Texas City and Seadrift, TX; Institute and So. Charleston, WV; Starr and Taft, LA; Bound Brook, NJ  
Statement signed: October 14, 1983  
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative values at the time of separation

Rate forwarded to Regional Commissioner of Customs: New York, December 13, 1983

Revokes: T.D. 72-338-D (an amendment to T.D. 70-189-L), as amended by unpublished letter of January 25, 1975

(W) Company: Uniroyal, Inc.

Articles: Agricultural chemicals (herbicides; growth regulants; acaricides; fungicides; pesticides/insecticides)

Merchandise: Various chemicals identified by Uniroyal chemical code numbers

Factories: Naugatuck, CT; Bay Minette, AL; Gastonia, NC; Geismar, LA; Brea, CA

Statement signed: August 30, 1983

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, December 12, 1983

(X) Company: The Upjohn Company

Articles: 1-Phenyl-3-pyrazolidone (PPD)

Merchandise: Phenyl hydrazine

Factory: North Haven, CT

Statement signed: September 16, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, December 5, 1983

(Y) Company: USR Optonix, Inc.

Articles: Rare earth phosphors

Merchandise: Yttrium oxide; europium oxide; gadolinium oxide

Factory: Beattystown, NJ

Statement signed: September 14, 1982

Basis of claim: Appearing in

Rate forwarded to Regional Commissioner of Customs: New York, October 24, 1983

(Z) Company: Wyman-Gordan Company

Articles: Titanium alloy rough forgings

Merchandise: Titanium alloy billets

Factories: Worcester, Millbury and North Grafton, MA

Statement signed: August 16, 1983

Basis of claim: Used in, less valuable waste

Rate forwarded to Regional Commissioner of Customs: New York, October 24, 1983

Revokes: T.D. 83-15-Z

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(T.D. 84-81)

## Synopsis of Drawback Decisions

The following are synopses of drawback rates issued March 25, 1981, to September 23, 1983, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(d), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

(DRA-1-09)

Dated: March 29, 1984.

File: 216818

EDWARD B. GABLE, JR.,

*Director,**Carriers, Drawback and Bonds Division.*

## (A) Company: Dr. Pepper Company

Articles: Dr. Pepper concentrate; Dr. Pepper sugar free concentrate; Dr. Pepper fountain concentrate; Dr. Pepper sugar free fountain concentrate; Dr. Pepper fountain syrup; Canned Dr. Pepper beverage and sugar free beverage; various flavors of concentrates (grape, root beer, etc.); various flavors of fountain syrup, canned Salute brand flavors; "J" compound or "Aromatic flavor blend"

Merchandise: Domestic Ethyl Alcohol (190 Proof)

Factory: Dallas, TX; Birmingham, AL

Statement signed: December 22, 1980

Basis of claim: Appearing in

Rate forwarded to Regional Commissioners of Customs: Houston and San Francisco, March 25, 1981

## (B) Company: Globe Extracts Company

Articles: Flavoring extract known as No. 1063; natural and artificial vanilla extract

Merchandise: Domestic tax-paid alcohol

Factory: Hauppauge, NY

Statement signed: June 2, 1982

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, October 4, 1982

## (C) Company: H. Kohnstamm &amp; Company, Inc.

Articles: Natural and artificial apple essence; natural and artificial apple flavor; and coffee extract

Merchandise: 190 Proof domestic alcohol

Factory: Kearny, NJ

Statement signed: March 28, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, July 5, 1983

(D) Company: Ingredient Technology Corporation, Flavor & Fragrance Division

Articles: Vanilla-Vanillin Extract

Merchandise: Domestic tax-paid alcohol

Factory: Brooklyn, NY

Statement signed: October 27, 1982

Basis of claim: Used in

Rate issued by Regional Commissioner of Customs in accordance with section 22.4(O)(2): New York, February 3, 1983

Revokes: T.D. 54742-C, to cover a change in name of company from American Food Laboratories, Inc.

(E) Company: Ingredient Technology Corporation, Flavor and Fragrance Division

Articles: Strawberry extract

Merchandise: Domestic tax-paid 190 proof alcohol

Factory: Brooklyn, NY

Statement signed: October 27, 1982

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, May 10, 1983

(F) Company: The Seven-Up Company

Articles: Natural lemon flavor, WONF (Drawback No. 1230)

Merchandise: 190 proof domestic alcohol

Factory: St. Louis, MO

Statement signed: June 22, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, September 23, 1983

(G) Company: The Seven-Up Company

Articles: Natural and Artificial Pecan Poraline Flavor (Drawback No. 1219)

Merchandise: 190 proof domestic alcohol

Factory: St. Louis, MO

Statement signed: June 22, 1983

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York, September 23, 1983

(H) Company: Warner-Jenkinson Company

Articles: Lemon-Lime extract No. 726

Merchandise: 190 Proof Domestic Alcohol

Factory: St. Louis, MO

Statement signed: April 8, 1982

Basis of claim: Used in

Rate forwarded to Regional Commissioner of Customs: New York,  
April 26, 1982

(T.D. 84-82)

### Bonds

Approval and discontinuance of consolidated aircraft bonds (air carrier blanket bonds), Customs Form 7605

The following consolidated aircraft bonds have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following, which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: April 2, 1984.

Name of principal and surety	Date term commences	Date of approval	Filed with district director/area director/amount
Minerve S.A., 4, Rue Cambon 75001, Paris; Washington International Ins. Co. The foregoing principal has been designated a carrier of bonded merchandise.	Mar. 13, 1984	Mar. 22, 1984	New York Seaport \$100,000
Western Air Lines, Inc., 6150 Century, Rm. 43, Los Angeles, CA; Travelers Indemnity Co. D 3/26/84..... The foregoing principal has been designated a carrier of bonded merchandise.	June 30, 1980	Aug. 11, 1980	Anchorage, AK \$100,000

BON-3-01  
216812

EDWARD B. GABLE, JR.,  
*Director,*  
*Carriers, Drawback and Bonds Division.*



## Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the U.S. Customs Service is published for the information of Customs officers and the importing community. Although the decisions are not of sufficient general interest to warrant publication as Customs Service Decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the U.S. Customs Service. Individuals to whom any of these decisions would be of interest should read the limitations expressed in 19 CFR 177.9(c).

A copy of any decision included in this listing, identified by its date and file number, may be obtained through use of the microfiche facilities in Customs reading rooms or if not available through those reading rooms, then it may be obtained upon written request to the Office of Regulations and Rulings, Attention: Legal Retrieval and Dissemination Branch, Room 2404, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229. Copies obtained from the Legal Retrieval and Dissemination Branch will be made available at a cost to the requester of \$0.15 per page. Requests for copies must be accompanied by payment in the appropriate amount by check or money order. The cost per ruling (number of pages multiplied by \$0.15) is indicated in the right hand column listed below.

The microfiche referred to above contains rulings/decisions published or listed in the CUSTOMS BULLETIN; many rulings predating the establishment of the microfiche system, and other rulings/decisions issued by the Office of Regulations and Rulings. This microfiche is available at a cost of \$0.15 per sheet of fiche. In addition, a keyword index fiche is available at the same cost (\$0.15) per sheet of fiche.

Additions to both sets of fiche are made quarterly. Requests for subscriptions to the microfiche should be directed to the Legal Retrieval and Dissemination Branch. Subscribers will automatically receive updates as they are issued and will be billed accordingly.

Dated: April 3, 1984.

B. JAMES FRITZ,

*Director,*

*Regulations Control and Disclosure Law Division.*

Date of decision	Control No.	Issue	Number of pages	Cost
<i>Please note: Prepayment is required for copies of rulings listed below.</i>				
9-21-83	071292	Classification: AM/FM clock radio (911.95, TSUS).....	2	\$0.30
1-3-84	071389	Classification: timers for microwave ovens (715.60 through 715.68, TSUS).....	3	.45
1-12-84	071588	Classification: oral-nasal tracheal suction sets (709.27, TSUS) .....	2	.30
2-14-84	071622	Classification: the applicability of GSP to caffeine that is exported for purification and returned to the U.S.....	2	.30
2-21-84	071649	Classification: rubber gaskets used for dividing window panes made in Mexico from component materials of U.S. origin (807.00, TSUS).....	2	.30
1-10-84	071664	Classification: the applicability of item 807.00, TSUS, to certain tiebacks for draperies and curtains made from component cords of U.S. origin and imported from Mexico.....	2	.30
2-21-84	071705	Classification: tent stakes exported and packed into kits, or reduced in size abroad (800.00, 806.20, TSUS).....	2	.30
12-14-83	072655	Classification: turbine-generator (682.60, TSUS).....	4	.60
2-22-84	106489	Vessels: only coastwise-qualified vessels may be used in transportation between U.S. and drilling installations on Outer Continental Shelf (46 U.S.C. 883, 46 U.S.C. 12106, 43 U.S.C. 1333(a)).....	3	.45
12-27-83	106524	Instruments of International Traffic: glass flasks used to ship air from points in the U.S. to Australia for experiment are instruments of international traffic; air pumps sent with the initial shipment of flasks are not instruments of international traffic (19 U.S.C. 1322(a), 19 CFR 10.41a).....	4	.60
1-25-84	106532	Instruments of International Traffic: articles designated as instruments of international traffic are not entitled to duty-free treatment if they are not arriving in use in international traffic and tested before being put to use in international traffic (19 CFR 10.41a) .....	2	.30

Date of decision	Control No.	Issue	Number of pages	Cost
1-20-84	106545	Vessels: a foreign-built vessel may transport non-hazardous waste from a U.S. port to an incineration site on the high seas and there incinerate the waste without violation of the coast-wise merchandise law (46 U.S.C. 883)....	2	.30
1-5-84	543164	Value: Mexican assembly cost figures for the sale or transfer of merchandise should be stated in U.S. dollars, converted at the Mexican Government's controlled rate of exchange (TAA of 1979).....	3	.45
1-6-84	543166	Value: general expenses of an assembler reimbursed by the importer are part of computed value of imported merchandise (19 U.S.C. 1401a (e)(1)(B) and (c)(2)(B)).....	2	.30
2-22-84	543230	Value: the dutiable status of interest payments under transaction value.....	2	.30

# U.S. Court of Appeals for the Federal Circuit

(Appeal No. 83-1379)

E. R. HAWTHORNE & Co., INC., A/C VEPED TRAFFIC CONTROLS,  
INC., APPELLEE v. UNITED STATES, APPELLANT

(Decided March 28, 1984)

*Deborah E. Rand*, of New York, New York, argued for appellant. With her on the brief were *J. Paul McGrath*, Assistant Attorney General, *David M. Cohen*, Director, and *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office.

*John S. Rode*, of New York, New York, argued for appellee. With him on the brief was *R. Brian Burke*.

Appealed from: United States Court of International Trade.

*Judge BOE.*

Before *BALDWIN*, *Circuit Judge*, *NICHOLS*, *Senior Circuit Judge*,  
and *KASHIWA*, *Circuit Judge*.

*NICHOLS*, *Senior Circuit Judge*.

## STATEMENT OF THE CASE

This case involves the proper tariff classification of tapered or conical steel poles 20 to 39 feet long and chiefly used after finishing to support street or highway or other outdoor lights. The District Director of Customs at Houston, Texas, classified them as "Illuminating Articles and parts thereof, of base metal, Other \* \* \*," Tariff Schedules of the United States (TSUS), Item 653.39, at 17.6% ad valorem. By virtue of 28 U.S.C. § 2639(a)(1), this classification is presumed to be correct and the burden of proving otherwise rests upon the party challenging the decision. The Court of International Trade (CIT) sustained the importer's protest, holding that the proper classification was "Pipes and tubes and blanks therefor \* \* \* steel," TSUS Item 610.32, at .03¢ per pound, 572 F. Supp. 1279 (Ct. Int'l Trade 1983). The importer claims other classifications as alternatives, but we need not consider them. We hold that it failed to sustain its burden of showing that the district director's classification was incorrect. The CIT decision was therefore erroneous as a matter of law and cannot be sustained.

The competing classifications are more fully set out in that decision with a fuller description of the merchandise and how it is pro-

duced. It is only necessary to add here the fact the CIT relied on, namely, that the imported merchandise receives further processing and advancement in the United States before it can be incorporated as a finished part into the complete lighting fixture as installed. A base plate is often welded on the bottom of the pole after importation, clamps to support a mast arm are welded at the top, the pole is, if necessary, cut at the top to the exact length specified, the ends are squared, provision is made at times for a handhole ring to be made and attached for connection of the wires, the pole is painted or galvanized, and, if necessary, a transformer base is attached. About half the cost and one-third of the time required for a complete finished part is thereby incurred after importation; however, the pole as imported is in its shape and dimensions made to conform to the user's specifications and drawings and would not be accepted by anyone else. There is no dispute in the evidence that subject to random other uses, articles of the class or kind of those imported have a use as stated above exceeding all other uses and if chief use controls the tariff classification, by General Headnote 10(e), chief use is as unfinished parts of lighting fixtures.

Various other relevant headnote provisions of TSUS remain to be noticed.

By General Headnote 10(c) an imported article "described in two or more provisions of the schedule," is classifiable in the provision which most specifically describes it.

By General Headnote 10(h) a tariff description of an article covers the article "whether finished or not finished."

By General Headnote 10(ij)—

A provision for "parts" of an article covers a product wholly or chiefly used as a part of such article, but does not prevail over a specific provision for such part.

However, Item 610.32, the classification of the imported items as held by the CIT, falls within Part 2 of Schedule 6 of the TSUS, and a headnote applicable to items in that part provides—

1. \* \* \* This part does not include

\* \* \* \* \*

(iv) Other articles specially provided for elsewhere in the tariff schedules, or parts of articles.

#### OPINION

Looking at the issue on the basis of the headnotes, apart from the case law, the correctness of the district director's choice of classification seems manifest. The headnote to Part 2 of Schedule 6, the last cited above, and which the CIT judge never mentions, conflicts with the last part of General Headnote 10(ij) and prevails, because it is more specific, dealing with respect to items only in Part 2, of which Item 610.32 is one. Parts of illuminating articles are themselves classed as illuminating articles by virtue of an express

provision, 653.39 TSUS. (The reader will have to be patient with the two distinct meanings of the word "Part;" that are inherent in the TSUS and makes a little extra concentration necessary on—heaven forgive us!—the reader's part.)

The trial court, by ignoring the headnote to Part 2 of Schedule 6, concluded the merchandise could not be classified as a part, because it was otherwise specifically provided for in the tariff schedule—an application of the Headnote 10(ij) "specificity test." The effect of Headnote 1(iv) of Part 2, Schedule 6, is to render the Headnote 10(ij) "specificity test" inapplicable to Schedule 6, Part 2. The result is that since the items in issue are parts of illuminating articles, they must be classified as such, even if they are tubes or pipes. The poles are not excluded from the category of "parts" because of being unfinished, since by General Headnote 10(h) they are covered as unfinished articles, provided they are chiefly used as parts as is the case here.

Under the TSUS, applicability of a "parts" classification is controlled by chief use, not actual use. *United States v. John V. Carr & Son, Inc.*, 495 F.2d 771 (CCPA 1974). However, the CIT judge held that an unfinished part was not a part for tariff purposes until so far advanced that it was exclusively dedicated to use as a part, *i.e.*, was a finished part. This conflicts with the first portion of General Headnote 10(c) which allows a product chiefly used as a part to be treated as a part. Obviously, if it has other uses, even if only random, it cannot be exclusively dedicated. The CIT judge seems further to require that to be a part an article must be finished, contrary to General Headnote 10(h), *supra*.

The CIT judge relies on a fairly recent decision by one of our predecessor courts interpreting the TSUS: *Avins Industrial Products Co. v. United States*, 515 F.2d 782 (CCPA 1975), but the reliance is mistaken. In the first place, that decision and the one below, there reviewed, both affirm the district director and, therefore, in that case the CCPA decision needed only to support the presumption of correctness of the customs decision instead of overriding it. The competing provisions were stainless steel wire, Item 609.45, the customs service classification which was sustained, and Item 685.25, as it then was, parts of radio reception antennae. The opinion holds that as parts, the wires were unfinished, as stipulated, and that an unfinished part must be exclusively dedicated to the article of which it is to be a part, whereas these wires had other possible uses. All the evidence, however, was stipulated, and a reading of the stipulation in the decision below shows that it had nothing to say about chief use. In that case, therefore, the importer relied upon use of the actual imported articles themselves, not on chief use of all articles of the same class or kind. The *Avins* court below cited and relied upon other cases involving actual use and not chief use of unfinished articles; *Finn Bros., Inc. v. United*

*States*, 454 F.2d 1404 (CCPA 1972) and *F. W. Myers & Co. v. United States*, 425 F.2d 781 (CCPA 1970).

According to Sturm, *Customs Law and Administration* (3d ed. 1983) § 54.9 at 42, the law before the existence of TSUS was well settled that to be classed as a part of another article, merchandise had to be "dedicated," i.e., exclusively dedicated, for use with the other article. The meaning and intent of the TSUS was, she says, to broaden this, subject to the normal rule that an *eo nomine* designation (except in Schedule 6, Part 2) takes precedence over a designation as a part. Since in this case the normal rule does not apply because of the exception stated in the cited headnote to Schedule 6, Part 2, if the import is chiefly used as a part, it does not have to be wholly so used (i.e.) "dedicated." The CIT judge's authority for not observing the presumption of correctness of the customs determination therefore fails. Exclusive dedication remains important in cases, such as *Avins*, where chief use cannot be established.

In *United States v. Servco Co.*, 477 F.2d 579 (CCPA 1973), a TSUS case, one of our predecessor courts held that the Customs Service erred in classifying certain alloy steel products, "drill collars," as "other tubes," Item 610.52, and should have classed them as parts (unfinished) of boring and extracting machinery, then Item 664.05. The parties have some difficulty applying this decision as a precedent as it is stated to be "limited to its own facts," at 581, but it does appear to be inconsistent with the trial court's notion that *no* further processing is allowable after importation to make a part. The *Servco* opinion, whatever else it does, expressly rejects an argument there made on behalf of the government, that Schedule 6, Part 2, Headnote 1 (iv), is not a tariff description of an article such as to come under General Headnote 10(h), bracketing together for common tariff treatment finished and unfinished articles.

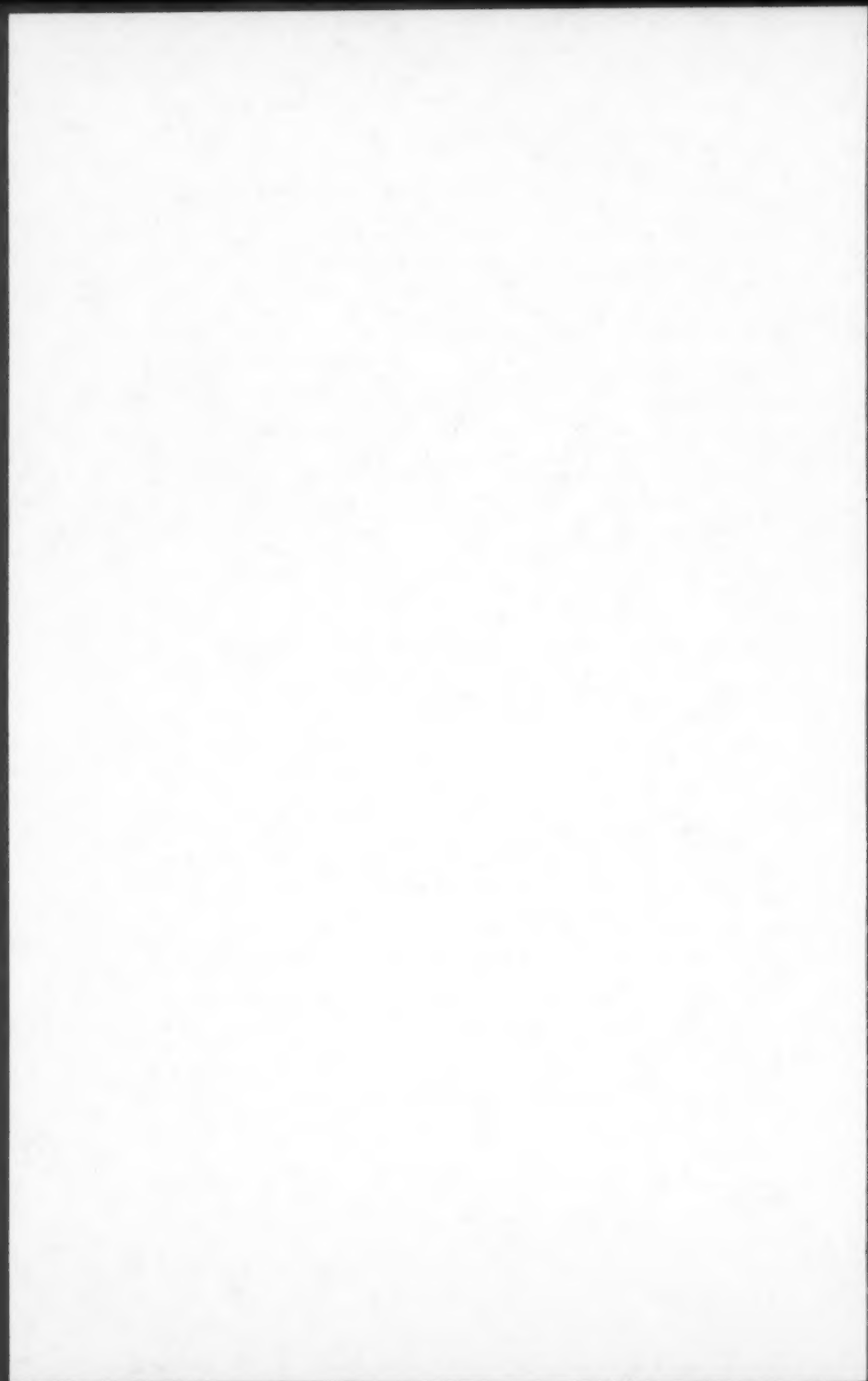
Both propositions the Customs Service relied on here are apparently supported by the literal language of TSUS and by case authority: i.e., that chief use is the test, not exclusive dedication, to make a "part," and that the tariff treatment of an unfinished part is the same as that accorded to a finished part, other things being equal.

The CIT judge's statement that chief use cannot be ascertained is not a finding of fact—the evidence was all to the contrary—but a legal conclusion that the chief use test is to be applied, not to the unfinished article as imported, but to some other hypothetical article to be produced from it, which would be a part not unfinished, but finished.

#### CONCLUSION

Accordingly, the decision of the Court of International Trade is reversed.

#### REVERSED





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